

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

At World Properties, LLC, d/b/a)	
@properties,)	
)	
Plaintiff,)	Case No. _____
)	
v.)	Judge _____
)	
Baird & Warner Real Estate, Inc.,)	Magistrate Judge _____
)	
Defendant.)	Jury Trial Demanded
)	

COMPLAINT FOR FALSE AND MISLEADING ADVERTISING

Now comes Plaintiff, At World Properties, LLC, doing business as @properties, ("@properties") by and through its undersigned attorneys, states as follows in support of its Complaint against Defendant, Baird & Warner Real Estate, Inc. ("B&W"):

NATURE OF THE ACTION

1. @properties brings this action against the defendant as a result of B&W's violation of the Lanham Act, 15 U.S.C. § 1125(a)(1) and the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/2.
2. All of the claims in this Complaint arise from false and/or misleading claims made by B&W in its advertising and promotional materials provided to consumers in Illinois and neighboring states regarding B&W's real estate brokerage services.
3. In its advertising and promotional materials, B&W has made false statements that mislead consumers regarding B&W's services and constitute deceptive trade practices.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1337 and 15 U.S.C. § 1121(a) because this action arises under the laws of the United States.

5. The Court has supplemental jurisdiction over the state law claim pursuant to 28 U.S.C. § 1367.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because B&W is a resident of this District, and a substantial part of the events or omissions at issue in this Complaint occurred in this District.

PARTIES

7. @properties is a residential real estate brokerage company that serves Chicago and the surrounding counties, Indiana, Michigan, and Wisconsin.

8. B&W is an Illinois corporation with its principal place of business in Chicago, Illinois. B&W is a residential real estate brokerage company that serves Chicago and the surrounding counties, as well as Wisconsin.

FACTUAL ALLEGATIONS

I. BACKGROUND REGARDING THE PARTIES, MRED, AND B&W'S FALSE ADVERTISEMENTS

9. @properties and B&W are competitors in the real estate brokerage market in Chicago, the surrounding counties, and Wisconsin.

10. Midwest Real Estate Data ("MRED") is an industry standard real estate data aggregator and distributor, providing real estate brokers in Chicago and the surrounding counties with multiple listing service ("MLS") information and statistics.

11. MRED compiles data and statistics on a wide variety of real estate listing and sales categories for Chicago, Cook County, and several other counties in northern Illinois.

12. Real estate brokerage companies use MRED to determine statistics regarding, among other things, their and other brokerage companies' sales volume, listing volume, and average sales prices for certain date ranges or geographic areas.

13. When a real estate broker searches MRED data, he or she may limit his or search using one or more categories. For instance, a search of MRED data can be limited:

- a. to specific cities, counties, ZIP codes, or neighborhoods;
- b. by type of property, such as detached single-family homes, attached single-family homes, 2-4 unit properties, or mobile homes;
- c. temporally, such as to a specific month, a specific year, or a date range;
- d. by listing or sales price of properties
- e. by properties listed or sold by a specific real estate brokerage company or multiple companies; or
- f. by whether a property is a newly constructed or previously owned.

14. "Chicagoland" is generally recognized in the real estate industry and MRED to include the City of Chicago, Cook County, and all "collar" counties (such as Lake County, DuPage County, and Will County).

15. B&W advertises in magazines, including an advertisement in the February 11, 2018 and March 13, 2018 electronic mail distributions of Chicago Agent Magazine ("Chicago Agent Advertisement").

16. In addition, B&W's website contains a blog with similar information as that in the Chicago Agent Advertisement (the "B&W Blog Post").

17. In addition, similar information appears on B&W's social media websites, as well as several of B&W's brokers' websites and social media sites (the "Internet Advertisements").

18. Collectively, the Chicago Agent Advertisement, B&W Blog Post, and Internet Advertisements are referred to in this Complaint as the "B&W Advertisements."

19. Each of the B&W Advertisements contains statements regarding B&W's residential real estate brokerage business.

20. As discussed in more detail below, several of the statements made in the B&W Advertisements are false and/or misleading.

II. B&W'S FALSE ADVERTISING STATEMENTS

21. The Chicago Agent Advertisement was contained in an email distribution from Chicago Agent Magazine.

22. Chicago Agent Magazine is a publisher that describes itself as "Chicagoland's leading source of local news and information for the well-informed residential real estate professional. Through its bi-weekly magazine, robust website and events, Chicago Agent provides its audience – which is composed of Chicagoland's top agents, brokers, real estate developers and mortgage professionals – with the breaking news and in-depth features that they need to build their business and stay connected to the community." About, Chicago Agent Magazine, *available at* <https://chicagoagentmagazine.com/about/> (accessed Feb. 14, 2018).

23. The Chicago Agent Advertisement makes several statements regarding B&W's real estate brokerage services and B&W's position in the real estate brokerage marketplace.

24. A copy of the Chicago Agent Advertisement is attached as Exhibit 1.

25. The Chicago Agent Advertisement contains several false or misleading statements.

26. The subject line of the e-mail in which the Chicago Agent Advertisement is located states, "Our 2017 Stats Are Pretty Interesting." The entirety of the e-mail is the Chicago Agent Advertisement.

27. In the Chicago Agent Advertisement, B&W states, in large font, over a photograph of Chicago's skyline, "IT'S OFFICIAL. WE CRUSHED 2017." [Exhibit 1 (emphasis in original).]

28. Below the photograph are two columns that contain several statements each. [*Id.*]

29. At the top of the left column, B&W states, "\$8.8 Billion in sales." [*Id.*]

30. There are no qualifications or explanations as to how B&W calculated this number. Likewise, there is no data source cited. [*See id.*]

31. Directly below the "\$8.8 Billion in sales" statement, B&W states, "32,000 transactions." [*Id.*]

32. There are no qualifications or explanations as to how B&W calculated this number. Likewise, there is no data source cited. [*See id.*]

33. According to MRED data accessed on or about February 14, 2018, for the period starting January 1, 2017 through December 31, 2017, for all categories of properties in Chicagoland, B&W's total volume for properties listed and sold was \$5,662,167,439, and the total number of sales for B&W was 17,168.

34. The entirety of Chicago Agent Advertisement is a hyperlink, which, if clicked, will take the user to the B&W Blog Post, which is located on B&W's publicly available website, at <http://www.bairdwarner.com/blog/2018/02/2017-good-us/> (accessed Feb. 15, 2018).

35. B&W's website, including the B&W Blog Post, is directed to the public and consumers. Any person with an internet connection can access B&W's website and the B&W Blog Post.

36. Upon information and belief, the B&W Blog Post is viewed by real estate professionals, real estate developers and investors, and potential homebuyers in Illinois, Wisconsin, and other states.

37. A copy of the B&W Blog Post is attached as Exhibit 2.

38. The B&W Blog Post is entitled "2017 Has Been Good to Us." [Ex. 2.]

39. The B&W Blog Post states, "The \$8.8 billion in sales and more than 32,000 transactions we did last year is evidence that our clients and our agents across Chicagoland are onto something." [*Id.*]

40. As with the Chicago Agent Advertisement, there are no qualifications or explanations as to how B&W calculated either number in the B&W Blog Post. Likewise, there is no data source cited for either number. [*See id.*]

41. In addition to the Chicago Agent Advertisement and the B&W Blog Post, the Internet Advertisements contain posts on publicly accessible websites and social media sites that contain similar false and misleading statements.

42. The Internet Advertisements directed to the public and consumers. Any person with an internet connection can access the Internet Advertisements.

43. Upon information and belief, the Internet Advertisements are viewed by real estate professionals, real estate developers and investors, and potential homebuyers in Illinois, Wisconsin, and other states.

44. A copy of the Internet Advertisements is attached as Exhibit 3.

45. B&W's Facebook page contains a post from February 16, 2018 that states, "2017 has been good to us, from winning Chicago Tribune's Top Workplace in our industry for the sixth year in a row to doing \$8.8 billion in sales. Seems like we're on to something, and we don't plan

to stop here. [#ItsEasierHere.](http://ow.ly/ZGUo50gwonf)" Facebook, Baird & Warner, *available at* <https://www.facebook.com/bairdwarner/> (accessed Mar. 12, 2018). [Ex 3 at 1.] If a person clicks on the "<http://ow.ly/ZGUo50gwonf>" link, he or she will be taken to the B&W Blog Post.

46. There are no qualifications or explanations as to how B&W calculated the "\$8.8 billion in sales," and there is no data source cited for this number. [*See id.*]

47. The Facebook page for B&W's Oak Park/River Forest office contains a post from February 12, 2018 that states, "With over \$8.8 billion in sales, over 500 new brokers, 3 new offices, No 1 Top Workplace... the list goes on and on. It's official, we've crushed it in 2017. #bairdwarner #itseasierhere #joinbw." Facebook, Baird & Warner – Oak Park/River Forest, *available at* <https://www.facebook.com/bairdwarneroakparkriverforest/> (accessed Mar. 12, 2018). [Ex 3 at 2.] There are no qualifications or explanations as to how B&W calculated the "over \$8.8 billion in sales," and there is no data source cited for this number. [*See id.*]

48. The Instagram page for B&W's Oak Park/River Forest office contains a post from February 13, 2018 that contains the photographic advertisement contained in the Chicago Agent Advertisement, which states, "\$8.8 Billion in sales" and "32,000 transactions." Instagram, Baird & Warner – Oak Park/River Forest, *available at* <https://www.instagram.com/p/BfJjMfuDEl7/?taken-at=37577374> (accessed Mar. 12, 2018). [Ex 3 at 3.] There are no qualifications or explanations as to how B&W calculated either number, and there is no data source cited for either number. [*See id.*]

49. In addition, several of B&W's real estate brokers have indicated on their websites or social media accounts that B&W had "\$8.8 billion in sales" and/or "more than 32,000 transactions," and/or they provide links to the B&W Blog Post. *See* Lisa Kon, "2017 Has Been Good To Us!," LinkedIn, *available at* <https://www.linkedin.com/pulse/2017-has-been-good-us->

lisa-kon/ (Feb. 12, 2018; accessed Mar. 12, 2018) [Ex 3 at 4-5.]; Anne Rossley, "We crushed it!," *available at* <http://www.annerossleyrealestate.com/anne-rossley-2017-success/> (Feb. 18, 2018; accessed Mar. 12, 2018) [Ex 3 at 6-11.]; Facebook, Brie DiMucci – Baird & Warner, *available at* <https://www.facebook.com/breedimuccibairdwarner/> (accessed Mar. 12, 2018) (February 16, 2018 post sharing B&W's Facebook post discussed above in Paragraph 45) [Ex 3 at 12.]. As with the other B&W Advertisements, there are no qualifications or explanations as to how B&W calculated either number, and there is no data source cited for either number. [Ex 3 at 4-12.]

COUNT I

False Advertising in Violation of the Lanham Act 15 U.S.C. § 1125(a)(1)

50. Plaintiff incorporates the allegations in paragraphs 1-49 above into this paragraph.
51. B&W is a "person" as that term is defined by 15 U.S.C. § 1127.
52. The B&W Advertisements are false or misleading.
53. The B&W Advertisements are likely to deceive consumers.
54. The statements in the B&W Advertisements are material in that they will affect consumers' decision regarding which real estate brokerage company to choose.
55. The statements in the B&W Advertisements are material in that they will affect the choices of potential employees deciding whether to apply for employment at B&W or @properties.
56. The B&W Advertisements entered interstate commerce.
57. The B&W Advertisements are likely to injure @properties because the false or misleading statements in the B&W Advertisements are likely to divert potential @properties clients to B&W and likely to divert potential employees of @properties to B&W.
58. @properties does not have an adequate remedy at law for the false or misleading statements made in the B&W Advertisements.

59. Given the availability of MRED's statistics and data to B&W, B&W made the false or misleading statements in the B&W Advertisements knowingly and willfully.

WHEREFORE, Plaintiff, At World Properties, LLC, respectfully requests that this Court enter judgment and order in its favor and against Defendant, Baird & Warner Real Estate, Inc.:

a. Permanently enjoining and restraining Defendant, its agents, subsidiaries, affiliates, representatives, employees, officers, and directors from publishing or distributing the B&W Advertisements;

b. Permanently enjoining and restraining Defendant, its agents, subsidiaries, affiliates, representatives, employees, officers, and directors from falsely advertising regarding B&W, B&W's services, or B&W's competitors;

c. Requiring Defendant to destroy all remaining copies of the B&W Advertisements;

d. Requiring Defendant to publish a retraction of the false or misleading statements made in the B&W Advertisements;

e. Awarding damages to Plaintiff in an amount to be determined at trial; and

f. Awarding Plaintiff its costs and attorneys' fees.

COUNT II

False Advertising in violation of the Illinois Uniform Deceptive Trade Practices Act 815 ILCS 510/2

60. Plaintiff incorporates the allegations in paragraphs 1-59 above into this paragraph.

61. B&W is a "person" as defined by 815 ILCS 510/1(5).

62. The B&W Advertisements were prepared in the course of B&W's business.

63. The B&W Advertisements were made in Illinois and are directed at consumers in the State of Illinois.

64. The B&W Advertisements contain false or misleading statements.

65. The B&W Advertisements represent that B&W's real estate brokerage services have characteristics, benefits, and quantities that they do not have.

66. The B&W Advertisements represent that B&W's real estate brokerage services are of a particular standard, quality, or grade that they are, in fact, not.

67. The B&W Advertisements create a likelihood of confusion or misunderstanding.

68. The B&W Advertisements are likely to injure @properties because the false or misleading statements in the B&W Advertisements are likely to divert potential @properties clients to B&W and likely to divert potential employees of @properties to B&W.

69. @properties does not have an adequate remedy at law for the false or misleading statements made in the B&W Advertisements.

70. Given the availability of MRED's statistics and data to B&W, B&W made the false or misleading statements in the B&W Advertisements knowingly and willfully.

WHEREFORE, Plaintiff, At World Properties, LLC, respectfully requests that this Court enter judgment and order in its favor and against Defendant, Baird & Warner Real Estate, Inc.:

a. Permanently enjoining and restraining Defendant, its agents, subsidiaries, affiliates, representatives, employees, officers, and directors from publishing or distributing the B&W Advertisements;

b. Permanently enjoining and restraining Defendant, its agents, subsidiaries, affiliates, representatives, employees, officers, and directors from falsely advertising regarding B&W, B&W's services, or B&W's competitors;

c. Requiring Defendant to destroy all remaining copies of the B&W Advertisements;

d. Requiring Defendant to publish a retraction of the false or misleading statements made in the B&W Advertisements; and

e. Awarding Plaintiff its costs and attorneys' fees.

JURY DEMAND

Plaintiff demands a trial by jury on all issues in this case.

Date: March 19, 2018

Respectfully submitted,

AT WORLD PROPERTIES, LLC

By: /s/ Aaron H. Stanton
One of its attorneys

Aaron H. Stanton (astanton@burkelaw.com)
Andrew D. LeMar (alemar@burkelaw.com)
Burke, Warren, MacKay & Serritella, P.C.
330 North Wabash Avenue, 21st Floor
Chicago, Illinois 60611-3607
Telephone: (312) 840-7000
Facsimile: (312) 840-7900

4839-7037-2957.v1